

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, April 8, 2009 - 12:00 P.M.
Room 319, Heber Wells Building
160 East 300 South
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Ralph Astorga, President USWA Local 392
Dawn Atkin, Esq.
Thomas Bingham, President, Utah Manufacturers Association
Reo Castleton, SL County Fire Department
Brandt Goble, Painters and Tapers Local 77
Brian Kelm, Esq.
Edward Holmes, M.D., RMCOEH
Susan Kelly, Liberty Mutual
James V. Olsen, President, Utah Food Industry Association
Jeff Rowley, Risk Manager, Salt Lake County
Brad Tibbitts, Utah State Insurance Department
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter
Dennis Lloyd for Ray Pickup, Workers Compensation Fund

The following Advisory Council members were excused:

David Bird, Esq.

Legislative Liaison Present:

Senator Karen Mayne

Others Present:

Sherrie Hayashi - Commissioner
Alan Hennebold - Deputy Labor Commissioner
Larry Bunkall, Industrial Accidents Division Director, Labor Commission
Robyn Barkdull – Public Information Officer, Labor Commission
Elena Bensor – Workplace Safety Manager, Labor Commission
David Lamb – Administration Director, Labor Commission
Dr. Alan Colledge – Medical Director – Labor Commission
Maggie Karpuk – NCCI

WELCOME

1. Welcome – Commissioner Hayashi

Commissioner Hayashi brought the meeting to order at 12:00p.m.

2. Miscellaneous Business - Commissioner Hayashi

a. James Olsen moved to approve the minutes of the September 10, 2008 meeting. **Jeff Rowley** seconded the motion which passed unanimously.

b. Commissioner Hayashi reviewed the scheduled dates for WCA Meetings: June 10, August 12, and October 14.

The Commissioner thanked everyone for their support of legislation affecting the Labor Commission during the recent legislative session. She stated it was a great effort and example of the WCA Council working together to reach a compromise and unanimously support the separate pieces of legislation.

3. Presentation and Approval of 2009 Medical Fee Guidelines – Alan Colledge

Dr. Colledge gave an overview of the history of the adoption of the RBRVS schedule. The RBRVS was adopted about seven years ago and eliminates the past need for the Commission to update and publish over 7,000 codes. Using the RBRVS gives the Commission the advantage of national consensus building among panels of each medical specialty. He said each year the Medical Fee Advisory Committee revisits the schedule to make any recommendations for changes to the codes by comparing with other payers in the state.

Dr. Colledge explained that each year the Medical Fee Advisory Committee reviews the driving costs of the medical care system such as hospitals, medications, new procedures, frequency of procedures, rising patient expectations, and disabilities. They then determine how to allocate resources and help the system avoid financial collapse. The Committee compares the amount reimbursed under the RBRVS with Medicare and other payers in the state to determine if adjustments are necessary. Recommendations for 2009-2010 include no increase in any of the adjustments from the current fee schedule.

Maggie Karpuk, NCCI, stated that they had reviewed the changes being proposed to the medical fee schedule and felt the Commission was in line with NCCI, based upon their most current information. She added that in April 2009 they will have more up-to-date information on pricing for the cycle ending in December 2009 and will make a final recommendation at that time as to whether or not any further adjustments need to be made this year.

MOTION: Dawn Atkin moved to advise the Commission to approve the recommendations of the Medical Fee Committee and adopt the 2009-2010 RBRVS schedule and proceed through the rulemaking process. Her motion includes reviewing NCCI's recommendation following their updated information expected to be available in April 2009, and holding an additional meeting if necessary to make any adjustments necessary. **James Olsen** seconded the motion which passed unanimously.

4. Review Workplace Safety Account funded studies – Alan Colledge

a. Pain Medication Study - Dr. Colledge distributed a handout and explained that pain medication addiction is at epidemic proportions. He commended the WCA Council for their support of the Pain Medication Study which has resulted, among other things, in the Utah Clinical Guidelines on Prescribing Opioids for Treatment of Pain. He said the guide specifies when and who should be prescribed opioids for treatment, complete with tools to evaluate and screen those who should be prescribed the medications. The corresponding database also assists physicians to track if a patient is using narcotics already prescribed by a different physician to prevent duplication of the medication.

b. USU Research on Workers' Compensation Injuries – Dr. Colledge explained that the USU study to research workers' compensation injuries had already resulted in the publication of eight papers published in medical journals and he felt the money used to fund the USU studies is well spent.

5. Review WC Insurance Premium Surcharge Funds – David Lamb

a & b.. Employers Reinsurance Fund (ERF) and Uninsured Employers' Fund (UEF) – David Lamb distributed handouts reviewing the cash amounts currently in the ERF and UEF. He said the ERF is getting closer to being fully funded and the UEF actually has additional funds exceeding their liabilities currently available.

6. Funding for Public Service Announcement (PSA) for Workers' CompCHECK – David Lamb

David Lamb said that funding for the Workers' CompCHECK PSA, discussed at the last meeting, will now come from the Workplace Safety seminar account and some surplus LC administrative funds. The Council members expressed an interest in reviewing the script for the PSA before it is produced. Once the script is written by Commission staff and KUTV who is producing the PSA, the script will be distributed to the WCA Council for their review.

7. Presentation on Workplace Safety Account and 2009 Projects – Elena Bensor

Elena Bensor announced that grant applications are now open for the 2009-2010 year and will close on April 16, 2009. She said the number of applications already received is an increase over last year, and is most likely due to the recessed economy and notoriety of the grant application program.

8. Review and take action, as needed, on WC Legislation - Alan Hennebold

Mr. Hennebold distributed a summary of legislation passed during the 2009 Legislative Session which affected the Commission. The bills include:

1st Substitute S.B. 15 – Workers' Compensation Premium Assessment and Related Funding. Original bill authorized Legislature to appropriate up to 20% of the annual income to the restricted Workplace Safety Account for use by the Rocky Mountain Center for Occupational & Environmental Health. 1st substitute bill adds provisions establishing Industrial Accidents Restricted Account to fund Industrial Accidents and Adjudication Divisions. It creates a "sweeping" mechanism to transfer any excess funds in IARF into UEF. It establishes declining premium assessment caps for the next several years, ultimately ending ERF's assessment by Jan. 1, 1013.

S.B. 120 – Workers' Compensation Act. Eliminates statutory requirement of sending medical panel reports by certified mail.

S.B. 121 – Workers' Compensation Act – Attorneys' Fees. Broadens Commission authority to allow add-on attorney fees in claims involving medical benefits and less than \$4,000 in disability benefits.

H.B. 39 – Sunset Review of Title 34A , Chapter 8, Utah Injured Worker Reemployment Act. Eliminates position of reemployment coordinator in current statute; requires insurers to file quarterly reports with the Commission detailing rehabilitation activities.

H.B. 271 – UEF Collection Authority - Allows the UEF to maintain its own collection efforts, apart from the State Office of Debt Collection. Provides that after the Industrial Accidents Division assesses a penalty, that penalty becomes the property of the UEF.

1st Substitute H.B. 308 – Workers’ Compensation – Motor Carriers. Establishes statutory conditions under which motor carrier owner-operators will not be considered "employees" for purposes of workers' compensation system.

H.B. 32 – Amendments to Agency Rulemaking Regarding Criminal Penalties. As applicable to Commission, removes criminal penalties for violation of I.A. Division rules.

H.B. 224 – Health Care Provider Abusive Work Environment. Creates civil cause of action for "abusive employment practices" in government-run health care programs.

9. WC Legislation for the 2010 Legislative General Session

Commissioner Hayashi asked Council members to notify her of any concerns or suggestions they had regarding legislation for the next session.

10. Other Business

Commissioner Hayashi announced the funeral arrangements of **David Bird’s** wife, who recently passed away, and said the Commission was accepting donations toward flowers. She asked anyone interested to give their donations to **Robyn Barkdull**. It was suggested the Commission also send a letter to David from the WCA Council expressing their sympathy.

The Commissioner announced the 7th Annual Labor Commission Workers’ Compensation Educational Conference which will be held May 14, 2009, at the Utah State Capitol Complex.

The Commissioner thanked the Rocky Mountain Center for donating a framed photo of Dr. Richards and the late Sen. Ed Mayne’s father shown in a workplace situation.

Commissioner Hayashi reminded Council members the next meeting will be held on June 10, 2009, 11:30 a.m. and adjourned the meeting at 1:35 p.m.